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INTERSTATE FIRE & CASUALTY COMPANY

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO/OAKLAND DIVISION

INTERSTATE FIRE & CASUALTY
COMPANY,

Plaintiff,

vs.

UNITED NATIONAL INSURANCE
COMPANY, and DOES 1 - 10,

Defendants.

Case No. CV 07-04943 MHP

**INTERSTATE FIRE & CASUALTY
COMPANY'S OBJECTIONS TO THE
DECLARATION OF DIANE CRUZ IN
SUPPORT OF UNITED NATIONAL
INSURANCE COMPANY'S MOTION FOR
SUMMARY JUDGMENT**

Date: August 18, 2008
Time: 2:00 P.M.
Courtroom: 15

UNITED NATIONAL INSURANCE
COMPANY,

Counterclaimant,

vs.

INTERSTATE FIRE & CASUALTY
COMPANY and DOES 1 - 10,

Counter-Defendants.

Complaint Filed: August 21, 2007

Counterclaim Filed: October 1, 2007

Interstate Fire & Casualty Company ("Interstate") objects to the Declaration of Diane Cruz submitted in support of United National Insurance Company's ("United National") motion for summary judgment on the grounds that it is irrelevant and introduces issues of fact in violation of Local Rule 56-2. Interstate moves to strike the Declaration of Diane Cruz in its entirety.

1 Pursuant to Local Rule 56-2, the parties moved for summary judgment based on a joint
2 statement of undisputed material facts. United National attempts to create a material issue of fact by
3 improperly submitting Ms. Cruz's testimony which characterizes the evidence jointly submitted to
4 the Court. Interstate did not stipulate to Ms. Cruz's testimony and it is therefore submitted in
5 violation of Local Rules and should not be considered in support of United National's motion for
6 summary judgment.

7 Furthermore, Paragraphs 3 and 4 of Ms. Cruz's declaration are entirely irrelevant and are
8 therefore inadmissible. Fed. Rule of Evid. §§ 401, 402. The parties cross-motions for summary
9 judgment involve the discreet issue of contract interpretation of when a "claim" was made against
10 Cirrus. Ms. Cruz's lack of knowledge of United National's underwriting file for Cirrus' policy and
11 lack of investigation regarding Interstate's involvement in the *Tracy* matter are irrelevant to this
12 contract issue.

13 Based on the foregoing, Interstate objects to the Declaration of Diane Cruz and respectfully
14 requests that the Court issue an order striking the Declaration in its entirety.

15 DATED: August 5, 2008

HINSHAW & CULBERTSON LLP

18 /s/ Christopher J. Borders

19 /s/ Casey A. Hatton

CHRISTOPHER J. BORDERS

CASEY A. HATTON

Attorneys for Plaintiff and Counter-Defendant